

1986

RDG Associates/Jorman Corporation v. The Industrial Commission of Utah : Brief of Appellee

Utah Supreme Court

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UTAH

860003

IN THE SUPREME COURT OF THE STATE OF UTAH

.89

DOCKET NO.

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RDG ASSOCIATES/JORMAN
CORPORATION,

Plaintiff-Respondent,

v.

Case No. 86-0003

THE INDUSTRIAL COMMISSION
OF UTAH,

Defendant-Appellant.

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RESPONDENT'S BRIEF

Appeal from a Judgment of the District Court
of Salt Lake County, State of Utah

Honorable Kenneth Rigtrup, Presiding

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FILED
JUN 16 1986

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CORPORATION,	:	
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OF UTAH,	:	
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Defendant-Appellant.	:	

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SUMMARY OF ARGUMENT

In its effort to impose liability on respondent, RDG Associates/Jorman Corporation ("RDG") for the payment of wages earned by employees of RDG's building contractor, T&K Steel, Inc. ("T&K"), appellant, The Industrial Commission of Utah (the "Commission"), has committed a monumental error: it has elected to premise liability under § 34-28-8 of the Utah Wage Payment Statute (§ 34-28-1 et seq., Utah Code Ann. (1953)) rather than the Utah Bonding Statute contained in §§ 14-2-1 et seq., Utah Code Ann. (1953). In proceeding in that manner, the Commission has either ignored or overlooked the only statutory basis even arguably imposing liability on RDG for payment of wages earned by T&K's employees. Because the Utah Bonding Statute specifically prescribes the

circumstances under which a landowner such as RDG is liable for the payment of wages earned in connection with the conferring of improvements upon the landowner's property, the Commission's failure to proceed under that statute requires affirmance of the District Court's order of dismissal.

While the Utah Wage Payment Statute unquestionably is designed to protect wage earners from the risk of nonpayment of wages under certain circumstances, it does not, as the Commission suggests, make a landowner (or any other obligor) an absolute guarantor for the payment of wages. A review of the predecessor provisions of the Utah Wage Payment Statute and case law from other jurisdictions interpreting similar statutes and a recognition of the policies and purposes underlying the Utah Wage Payment Statute establishes that the legislature never intended to make contracting parties an insurer of unpaid wages. Rather, the legislature intended only to prevent parties from seeking to avoid liability for the payment of wages owed to their own employees by contracting that work out to "independent contractors" rather than employing such persons directly. Basic rules of statutory construction and common sense interpretation militate against any conclusion that the Utah

Wage Payment Statute extends unqualifiedly to impose absolute liability on contracting parties for unpaid wages.

The District Court's interpretation of the Utah Wage Payment Statute, as embodied in its order granting the Owner's motion for summary judgment dated November 18, 1985 (the "Summary Judgment Order") should, accordingly, be affirmed.

ARGUMENT

The District Court Correctly Determined That RDG Was Not Liable For The Payment Of Wages Earned By Employees Of Its Contractor

- A. The Utah Wage Payment Statute Was Intended To Impose Liability For Payment Of Wages Only On Parties Who Contracted Their Work Out To "Independent Contractors" Rather Than Employing Such Persons Directly.

There is no question that § 34-28-8 of the Utah Wage Payment Statute is designed to protect wage earners from the nonpayment of wages under certain circumstances. Unfortunately, this is a case of first impression in the State of Utah and there are no cases defining the precise circumstances under which wage earners are entitled to its

protective provisions.¹ In the District Court, the Commission asserted that the purpose of the statute was to give employees of a "subcontractor" who are not paid for their labor a remedy against the principal who ultimately benefits from the employees' efforts, even though as here, the principal (RDG) paid all amounts due to the contractor. Consequently, the Commission took the position that the statute contains absolutely no limitations, and imposes liability for unpaid wages on anyone who enters into a contract for the performance of work.

A review of prior legislative enactments of the Utah Wage Statute and case law from another jurisdiction with a similar statute clearly demonstrates that the Utah legislature did not intend to make contracting parties an absolute insurer of unpaid wages. Rather, the legislature

¹ In general terms, the Utah Wage Payment Statute requires employers to make timely and regular payment of wages to their employees, to give notices of their rate and date of payment, to settle wages due promptly upon voluntary or involuntary severance and to keep specified payroll records. As this court has observed, the statute is ". . . apparently aimed at helping those whose employment contracts are silent on its subject matter." Action Electric Company v. Industrial Commission of Utah, 636 P.2d 474, 475 (Utah 1981). Thus, it would appear that only where it is demonstrated that a contracting party has failed to comply with those requirements can it be required to pay the wages of its subcontractor's employees.

Intended to prevent parties from avoiding certain statutory obligations, including the payment of wages, which they owe to their own employees, by contracting such work out to "independent contractors" rather than employing such persons directly.

In 1937, the Utah legislature enacted the predecessor to the Utah Wage Payment Statute. This predecessor statute was codified as § 34-10-9, Utah Code Ann. and provided as follows:

"(a) Whenever an employer shall contract with another (herein called the subcontractor) for the performance of the employer's work, then it shall be the duty of such employer to provide in such contract that the employees of the subcontractor shall be paid according to the provisions of this act; and in the event that such subcontractor shall fail to pay wages to these employees as specified in this act, such employer shall become civilly liable to the employees of the subcontractor to the extent that such work is performed under such contract in the same manner as if said employees were directly employed by such employer.

(b) The provisions of paragraph (a) of this section shall likewise be deemed applicable to any person, firm, partnership, association or corporation who not being an employer, and hereinafter referred to in this act as an 'indirect employer,' contracts with a subcontractor for the performance of his work." (Emphasis added).

In 1941, § 34-10-9 was amended to read as follows:

"Whenever any person shall contract with another for the performance of work then it shall be the duty of such person to provide

in such contract that all wages earned pursuant to such contract shall be paid in accordance with the provisions of this act, and in the event that any wages earned under such contract shall not be paid as required in this act, such person shall be civilly liable for all wages for work performed under such contract in the same manner as if the employees entitled to such wages were directly employed by such person." (Emphasis added).

On its face, it is apparent that the 1941 amendment rewrote paragraph (a) of the 1939 statute to eliminate the term "employer" and deleted subparagraph (b) (the definitional section of employer) in its entirety. Finally, in 1966, the Utah legislature repealed the entire chapter (Chapter 10) entitled Payment of Wages and recodified it in Chapter 28 with no change other than the reference to "chapter" as opposed to "act." No other amendments to the Utah Wage Payment Statute have been made.

As noted above, there is no judicial guidance as to the applicability of the former or present Utah Wage Payment Statute or the purpose of the 1941 amendment. This type of statute, however, is not unique to the State of Utah. Kansas, for example, has an almost identical statute which provides as follows:

"Whenever any such corporation shall contract any or all of its work to any contractor, then it shall become a duty of such corporation to provide that the employees of such corporation or contractor shall be paid according to the provisions of this act, and

such corporation shall become responsible and liable to the employees of such contractor in the same manner as if said employees were employed by such corporation." (Emphasis added). KSA § 44-306.

In McGown v. Southwestern Bell Telephone Co., 529 P.2d 97 (Kan. 1974), the Supreme Court of Kansas went to great lengths to explain the purposes and applicability of the foregoing provision (the "Kansas Wage Statute"). In McGown, the defendant telephone company entered into a contract with D&M Cable Company ("D&M") wherein D&M agreed to install an underground telephone cable for the defendant. The contract was terminated prior to the completion of the contract and the plaintiffs (who were employees of D&M) brought an action against the defendant telephone company for the payment of unpaid wages.

The issue in McGown was whether the installation of underground cable was "work" of the defendant telephone company so as to make it liable under the Kansas Wage Statute. Since there was no Kansas case law defining the term "its work," the Kansas court was required to review the entire Kansas statutory scheme with respect to the protection of laborers to determine the purpose and applicability of the Kansas Wage Statute. In that review, the court focused on the Kansas workmen's compensation statute which imposed liability on persons for injuries and

lost wages suffered by direct employees or by the employees of a subcontractor with whom such person had contracted for the performance of work which was part of such person's "trade or business." As noted by the Kansas court, the purpose of the "trade or business" provision in the Kansas workmen's compensation statute was to prevent persons from avoiding the liability imposed therein by contracting away work which was part of their "trade or business" and claiming that the injured person was not a direct employee. Since there was and is no logical distinction between "unpaid wages" on the one hand, and "injuries and lost wages" on the other, the court in McGown determined that the purpose of the Kansas Wage Statute and the Kansas workmen's compensation statute was precisely the same: to prevent a corporation from evading statutory liability enacted to protect employees from contracting away its work to so-called independent contractors.

After determining that the purpose of the two statutes was identical, the court in McGown found that the "trade or business" cases decided under the Kansas workmen's compensation statute were applicable to define the term "its work" under the Kansas Wage Statute. Since under those cases the installation of underground cable was clearly part of the defendant telephone company's "trade or business,"

liability for unpaid wages under the Kansas Wage Statute was imposed.

The Utah Wage Payment Statute at issue in this case is virtually identical to Kansas'. Moreover, the Utah workmen's compensation statute (§§ 35-1-1 et seq., (1953)), also is designed to prevent a person from evading the liability imposed therein by contracting away work within its "trade or business." Following the rationale set forth in McGown, this court should refer to the Utah statutory scheme, particularly the Utah workmen's compensation statute, to determine the purpose and applicability of the Utah Wage Payment Statute.

In this case, RDG, as an owner of property, entered into a contract with T&K wherein T&K agreed to construct condominiums on RDG's property. Under Utah law, RDG, by this contract, did not contract away work which was part of its "trade or business." In the words of the District Court, it was "not regularly engaged in the construction business." (R. 97, 98). Therefore, under a long line of Utah workmen's compensation cases holding that the making of a contract for the construction of a building by one who is not engaged in the construction business does not constitute the conducting of a "trade or business", RDG's delegation of work to T&K does not amount to the contracting away of its work. See,

e.g., Lee v. Chevron Oil Co., 565 P.2d 1128 (Utah 1977). Thus, under the rationale of McGown and by analogy to the Utah workmen's compensation statute, RDG is not liable for the wages T&K failed to pay its employees. The District Court correctly applied that rationale and analogy in entering the Summary Judgment Order.

B. Only The Specific Utah Bonding Statute And Not The General Utah Wage Payment Statute Can Be Used To Impose Liability On A Landowner For Unpaid Wages Earned By Employees Of The Landowner's Contractor.

Beginning in 1915, the Utah Legislature enacted specific legislation for the protection of laborers whose efforts conferred a benefit on the owner of an interest in land. That legislation, which evolved through amendments in 1917, 1933, 1943 and 1977, is now embodied in § 14-2-1, Utah Code Ann. (1953 as amended). That section now provides that:

"The owner of any interest in land entering into a contract, involving \$2,000 or more, for the construction, addition to, alteration, or repair of, any building, structure, or improvement upon land shall, before any such work is commenced, obtain from the contractor a bond in a sum equal to the contract price, with good and sufficient sureties, condition for the faithful performance of the contract and prompt payment for material furnished, equipment and materials rented, and labor performed under the contract." (Emphasis added).

Section 14-2-2 of the Utah Bonding Statute provides that any person who fails to obtain such a bond, ". . . shall be

personally liable to all persons who have furnished materials or performed labor under the contract"

The Commission elected not to proceed under the Utah Bonding Statute. Rather, it sought to impose liability against the Owner under § 34-28-8 of the Utah Wage Payment Statute which provides:

"Subcontractors -- Compliance with act.
-- Whenever any person shall contract with another for the performance of work, then it shall be the duty of such person to provide in the contract that all wages earned pursuant to the contract shall be paid in accordance with the provisions of this chapter, and in the event that any wages earned under the contract shall not be paid as required in this act, such person shall be civilly liable for all wages for work performed under such contract in the same manner as if the employees entitled to such wages were directly employed by such person."

The presence of two separate statutes, both governing the obligation of contracting parties to pay wages earned by employees of one of the contracting parties, renders the statutes in pari materia. That is, both of the statutes relate to the same subject matter and were enacted for the same general purpose. Once it is demonstrated that two statutes are in fact in pari materia, the following "well-established rule of statutory construction"² applies:

² Murray City v. Hall, 663 P.2d 1314, 1318 (Utah 1983).

"In terms of legislative intent, it is assumed that whenever the legislature enacts a provision it has in mind previous statutes relating to the same subject matter, wherefore it is held that in the absence of any express repeal or amendment therein, the new provision was enacted in accord with the legislative policy embodied in those prior statutes, and they all should be construed together.

Provisions in an act which are omitted in another act relating to the same subject matter will be applied in a proceeding under the other act, when not inconsistent with its purposes. Prior statutes relating to the same subject matter are to be compared with the new provisions; and if possible by reasonable construction, both are to be so construed that effect is given to every provision in all of them." 2A, Sutherland Statutory Construction, § 51.02, at 290 (4th Ed. 1983).

Application of that rule of statutory construction requires, therefore, that each of the statutes -- the Utah Wage Payment Statute and the Utah Bonding Statute -- be interpreted in the manner most likely to give full effect to each. Clearly, that can be accomplished only by interpreting the Utah Wage Payment Statute as not applying to situations in which laborers are conferring an economic benefit on a landowner's property. Those situations are expressly contemplated, and their consequences specified, in the Utah Bonding Statute. By its terms, the Utah Bonding Statute is demonstrably more specific in scope. It makes specific provision for the payment of laborers' wages by the

landowner whose property is benefited. By contrast, the Utah Wage Payment Statute prescribes the obligations imposed on persons who use subcontractors to perform work which would otherwise be performed by such persons. It is clearly more general in scope and must be construed as not applying to situations explicitly set forth in a separate statutory provision such as the Utah Bonding Statute.

Under that analysis, the District Court properly concluded that where, as here, liability is sought to be imposed on a landowner for payment of wages earned by employees of the landowner's contractor, the specific Utah Bonding Statute and not the more General Wage Payment Statute applies.

C. The District Court's Interpretation Of § 34-28-8 Of The Utah Wage Payment Statute Avoids Disastrous And Punitive Consequences Which Were Never Intended By The Utah Legislature.

In seeking reversal of the Summary Judgment Order, the Commission urges this court to ignore common sense limitations respecting the types of contracts to which the Utah Wage Payment Statute applies.

The breadth of the Commission's interpretation is best highlighted by the following hypothetical: Upon discovering that his lawn mower is inoperable, a homeowner takes the lawn mower to Mower, Inc., to have the engine repaired.

After examining the lawn mower, the manager of Mower, Inc. agrees to make the repairs for \$50, and a work order is prepared and signed by the homeowner. Two days later, the homeowner returns to Mower, Inc., pays the sum of \$50, and returns home with his lawn mower. The lawn mower works perfectly and the homeowner is satisfied with the transaction. Unfortunately, Mower, Inc. fails to pay its mechanic his hourly wage. After reviewing the work order, the mechanic determines that he spent three hours repairing the homeowner's lawn mower and files a wage claim against the homeowner for the wages he should have been paid by Mower, Inc. According to the Commission's interpretation of the Utah Wage Payment Statute, the homeowner is liable to pay the mechanic's wages. Indeed, under the Commission's unbridled interpretation of the Utah Wage Payment Statute, the only way that the homeowner could be assured that he would not be liable for Mower, Inc.'s employee's unpaid wages would be for the homeowner to pay the employee's wages directly.

The number of similar hypotheticals which reach the same result is infinite; no attempt to set forth all possible hypotheticals will be made in this brief. Suffice it to state that the interpretation of the Utah Wage Payment Statute advanced by the Commission does nothing less than

make any person who enters into a contract for the performance of services an insurer of all wages earned as a result of such contract. In light of the fact that a huge percentage of this State's economy consists of service-oriented industry, the devastating consequences of the Commission's interpretation of the Utah Wage Payment Statute cannot be understated.

Clearly, under the former Utah Wage Payment Statute (§ 34-10-9, Utah Code Ann.), or the interpretation given the Kansas Wage Statute, the result in the above-described hypothetical would be different. The homeowner in the hypothetical, like RDG in this case, was not attempting to evade the liability imposed on him by the Utah Wage Payment Statute or the workmen's compensation statutes by entering into a contract for services to be performed. Application of the Utah Wage Payment Statute in such a situation is indefensible: To justify the Commission's interpretation of the existing Utah Wage Payment Statute, one must imply that the Utah legislature, by the 1941 amendment, truly intended to expand the reach and breadth of the Utah Wage Payment Statute by making all persons who enter into contracts an insurer of wages earned as a result of such contract. Such an implication is simply not justified. The 1941 amendment did nothing more than condense and simplify the Utah Wage

Payment Statute by substituting the term "person" for the term "employer" and eliminating the cumbersome definition of the term "employer."

The effort to condense and simplify statutory sections is frequently attempted by the Utah legislature without any intent to radically change the meaning of the statute. In Stanton Transp. Co. v. Davis, 341 P.2d 207 (Utah 1959), for example, the plaintiff argued that the Utah legislature, by compiling several mechanic's lien statutes into one statutory section, intended to increase the scope of the lien statute. In rejecting this argument, the Utah Supreme Court stated:

"The argument that the legislature in adopting the 1933 compilation of the code consolidating these lien statutes into one section intended to effect a radical change in the meaning of the whole statute would dignify the action of the legislature beyond what actually happened. If a departure from the traditional coverage of the lien laws is to be effected it should be by a clear manifestation of intent of the legislature than is shown in the manner in which this statute has come to its present form." Id. at 210.

As was the case in Stanton, it cannot be said that the legislature, by rewriting the Utah Wage Payment Statute to eliminate the cumbersome definition contained in paragraph (b) thereof, manifested an intent to expand radically the scope of the statute.

Finally, it is clear that the compilers of the Utah Code did not understand the 1941 Amendment or the 1966 enactment of the Utah wage statute to expand its applicability. The Utah Wage Payment Statute, as amended in 1941, was entitled "Employer liable to employees of subcontractor." This statutory heading was used despite the fact that the 1941 amendment substituted the term "person" for the term "employer" and eliminated the cumbersome definition of the term "employer" which was contained in subparagraph (b). The 1966 enactment of the Utah Wage Payment statute, merely reenacted § 34-10-9, Utah Code Ann. into Chapter 28 of Title 34 with no change except for the reference to "chapter" is entitled "Subcontractors -- compliance with act." These headings clearly indicate that the legislature did not intend to radically expand the applicability of the Utah Wage Payment Statute. As a consequence, there is little doubt that the Utah legislature did not intend, by the 1941 amendment, to enlarge the scope of the Utah Wage Payment Statute.

The Utah Wage Payment Statute is specifically designed to prevent persons from evading statutory employer liability by simply contracting away work which would otherwise have been performed by such person's direct employees. The

District Court's perceptive recognition of that purpose is reflected in the Summary Judgment Order.

D. The Principle Of Applying The "Plain Meaning" Of A Statute Is Not Violated By The District Court's Summary Judgment Order.

In its brief, the Commission accurately observes that the best evidence of the true intent and purpose of the Legislature in enacting [legislation] is the plain language . . . " (Appellant's Brief, p. 6). However, it is equally clear that this court has, on several occasions, interpreted a broad and seemingly unambiguous statute to give it "true meaning". In Snyder v. Clune, 15 Utah 2d 254, 390 P.2d 915 (1964), the court interpreted the tolling provision contained in § 78-12-35, Utah Code Ann. (1953), which provided that:

"If when a cause of action accrues against a person when he is out of the state, the action may be commenced within the term herein limited after his return to the state, and if after a cause of action accrues he departs from the state, the time of his absence is not part of the time limited for the commencement of the action." (Emphasis added).

In that case, the record established that plaintiff had commenced her lawsuit four years and three days after her accident. In an effort to avoid the statute of limitations, plaintiff contended that because defendants returned to

their home state of California immediately after the accident, the statute of limitations was tolled for the duration of their absence from Utah. In rejecting that contention, the court observed that:

"It is to be conceded that upon a superficial look at the above section, ignoring all other considerations, its literal wording might seem to indicate that where a defendant departs from the state after a cause of action arises, the time of his absence should not be counted as part of the time of the limitation. But statutes of necessity must state their objectives in general language. It is not always possible to foresee and prescribe in precise detail for all situations to which they might apply. Attempts to give them universal and literal application frequently lead to incongruous results which were never intended. When it is obvious that this is so, the statute should not be so applied. In order to give a statute its true meaning and significance it should be considered in the light of its background and the purpose sought to be accomplished, together with other aspects of the law which have a bearing on the problem involved." Id. at 915-16. (Emphasis added).

In declining to interpret the statute literally without reference to its underlying purpose and the existence of other relevant legislation, the court held that because a later statute authorized service upon a non-resident motorist by serving the Secretary of State, the defendant's physical departure from the state did not constitute an "absence" from the state within the meaning of the tolling statute. Accordingly, the court found the action to be time

barred even though the defendant had in fact departed from the state. The same principles of statutory construction were endorsed and applied in Howell v. Jackson, 18 Utah 2d 269, 421 P.2d 159 (1966).

Similarly, in the case at bar, the apparently expansive terms of the Utah Wage Payment Statute are arguably so broad as to regulate RDG's liability for payment of wages earned by its contractor's employees. However, application of the statute in the manner the Commission seeks would clearly lead to bizarre and "incongruous" results. Only by limiting the application of the Utah Wage Payment Statute to situations in which a contracting party is contracting or delegating a portion of its work to purported independent contractors for the purpose of circumventing wage obligations does the Utah Wage Payment Statute make any sense.

Previous pronouncements of this court support RDG's position that the Utah Wage Payment Statute like any other legislation, must be interpreted in a sensible manner consistent with actual legislative intent. American Coal Company v. Sandstrom, 689 P.2d 1, 3 (Utah 1984) ("This court's primary responsibility in construing legislation is to give effect to the intent of the legislature."); Stahl v. Utah Transit Authority, 618 P.2d 480 (Utah 1980) ("It is

also our duty to construe a statutory provision so as to make it harmonious with other statutes relevant to the subject matter."); United States Smelting, Refining & Mining Company v. Nielsen, 20 Utah 2d 271, 437 P.2d 199, 201 ("But it is true here, as it is practically everywhere in the law, that all of the law is not stated and cannot be stated in one provision. These [workmen's compensation] statutes must be looked at together, in the light of established rules of statutory construction, with a view to reconciling any apparent conflict and giving each of them effect according to their purpose insofar as that can be accomplished."); Colman v. Utah State Land Board, Utah 2d 14, 403 P.2d 781, 783 ("The statutes we have referred to should be considered together and in connection with the entire act and harmonized insofar as possible . . . ").

Moreover, it is a well-established principle of statutory construction that penal statutes which seek to impose statutory penalties of the type at issue in this case must be strictly construed. 2A, Sutherland Statutory Construction, § 59.03 (4th Ed. 1973). That principle has been clearly expressed as follows:

"It is a well-established principle of statutory construction that penal statutes must be strictly construed in determining the liability of the person upon whom the penalty is imposed, and that the more severe the penalty, and the more disastrous the

consequence to the person subjected to the provision of the statute, the more rigid will be the construction of its provisions in favor of such person and against the enforcement of such law." Missouri K. & T.R. Co. v. State, 100 Texas 420, 100 S.W. 766, 767 (1907).

Clearly, in this case, it is difficult to conceive of a penalty more devastating to a landowner than being required to pay its contractor's employees after once paying the contractor. Making a landowner responsible for all such wages renders it a statutory guarantor of full payment. As a penal provision, the Utah Wage Payment Statute must be both strictly and sensibly construed. The Summary Judgment Order appropriately reflects that construction.

CONCLUSION

There are at least five separate bases on which the District Court properly premised its decision not to apply the Utah Wage Payment Statute in the manner urged by the Commission. First, the evolution of the predecessor versions of the Utah Wage Payment Statute and the application of an almost identical statute by the Kansas Supreme Court strongly suggests that the legislature intended only to impose liability on contracting parties for the payment of wages earned by employees of subcontractors who performed work that would otherwise have been performed by the contracting parties. As such, the Utah Wage Payment

Statute cannot be viewed as making contracting parties, under all conceivable circumstances, absolute guarantors of wage obligations. Second, the Utah Bonding Statute expressly addresses the issue of a landowner's liability for the payment of wages earned in connection with the improvement of a landowner's property. That is the only statute that even arguably applies in this case. Third, literal interpretation of the Utah Wage Payment Statute leads to devastating results never intended by the legislature. Fourth, the "plain meaning" of the Utah Wage Payment Statute is not violated by the imposition of common sense limitations on legislation which, of necessity, is general in scope. Finally, as a penal statute, the Utah Wage Payment Statute must be strictly construed.

The District Court correctly applied these principles in entering the Summary Judgment Order. It is respectfully submitted that this court should affirm that determination.

DATED this 16 day of June, 1986.

HANSEN & ANDERSON

By /s/ John T. Anderson
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Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on the 16 day of June, 1986, four (4) true and correct copies of the foregoing instrument were sent, postage prepaid in the United States mail, to the following:

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